

EXHIBIT

5

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

-vs- Case No. 2:2020-cv-00041

U.S. DEPARTMENT OF AGRICULTURE, et al.,

Defendants.

VIDEOCONFERENCED DEPOSITION OF HOWARD STOVER

Thursday, May 5, 2022

10:02 a.m.

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REPORTED BY: KARINA L. JENNINGS

1 2 Videoconferenced deposition of HOWARD STOVER, taken 3 pursuant to Notice before Karina L. Jennings, Court 4 Reporter, and Notary Public for the Commonwealth of 5 Virginia. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 2 1 C O N T E N T S 2 3 EXAMINATION OF HOWARD STOVER PAGE 4 By Mr. Rosman 6 5 By Ms. Gray 109 6 7 E X H I B I T S 8 9 NO. DESCRIPTION PAGE 10 Exhibit 1 Decision memo 32 11 Exhibit 2 LUSA sole source 47 12 Exhibit 3 Acq Plan one 49 13 Exhibit 4 SBA acceptance 50 14 Exhibit 5 Market research report 53 15 Exhibit 6 Acq Plan two -- 16 Exhibit 7 POWTEC contract 56 17 Exhibit 8 SBA acceptance TE 57 18 Exhibit 9 Acq Plan TE 60 19 Exhibit 10 Ultima contract 63 20 Exhibit 11 Proposal 67 21 Exhibit 12 Time Systems 69 22 Exhibit 13 Solicitation 70 23 Exhibit 14 Stover e-mail proposal 73 24 Exhibit 15 SBA acceptance 76 25
1 2 3 A P P E A R A N C E S 4 5 ON BEHALF OF THE PLAINTIFF: 6 MICHAEL E. ROSMAN, ESQUIRE 7 CENTER FOR INDIVIDUAL RIGHTS 8 1100 Connecticut Avenue, N.W., Suite 625 9 Washington, D.C. 20036 10 rosman@cir-usa.org 11 ON BEHALF OF THE AGENCY: 12 JULIET GRAY, ESQUIRE 13 U.S. DEPARTMENT OF JUSTICE 14 Civil Rights Division 15 150 M Street, N.E. 16 Washington, D.C. 20002 17 juliet.gray@usdoj.gov 18 19 20 21 22 23 24 25	Page 3 1 E X H I B I T S 2 3 NO. DESCRIPTION PAGE 4 Exhibit 16 Acceptance letter 78 5 Exhibit 17 Blank English-El contract 78 6 Exhibit 18 Stover e-mails Re contract 82 7 Exhibit 19 Consolation letter 82 8 Exhibit 20 SBA acceptance letter 84 9 Exhibit 21 Memo Re terminations 87 10 Exhibit 22 More complete proposal 94 11 Exhibit 23 SBA acceptance letter 95 12 Exhibit 24 Ultima 95 13 Exhibit 25 Offer e-mail 101 14 Exhibit 26 SBA acceptance 102 15 Exhibit 27 MEC contract 102 16 Exhibit 28 Stover e-mail 104 17 Exhibit 29 SBA acceptance 107 18 19 20 21 22 23 24 25

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<p style="text-align: right;">Page 34</p> <p>1 looking at the chart for Region 4.</p> <p>2 A Okay.</p> <p>3 Q All right. And this describes the</p> <p>4 amount that had been committed in the region for task</p> <p>5 orders, as I understand it. Is that your</p> <p>6 understanding as well?</p> <p>7 A Yes.</p> <p>8 Q And when you saw this back in 2018, did</p> <p>9 you generally agree with the -- the figures that are</p> <p>10 identified here?</p> <p>11 A Yes.</p> <p>12 Q Okay. And so if I understand the chart</p> <p>13 correctly, at the bottom of the chart on the last</p> <p>14 page, it says, balance remaining, and there's about</p> <p>15 7.9 million dollars; is that right?</p> <p>16 A That's what it says, yes.</p> <p>17 Q Okay. And do you have any -- was that</p> <p>18 your understanding at the time that that was about</p> <p>19 the amount that was remaining in the region for IDIQ?</p> <p>20 A I -- just looking at this, because</p> <p>21 that -- that seems like it's high. I noticed that</p> <p>22 the State of California is not included on -- on this</p> <p>23 list. I know the State of California was a part of</p> <p>24 Region 4, so I would say that the document is</p> <p>25 probably in error.</p>	<p style="text-align: right;">Page 36</p> <p>1 want to know why there's three, and the reason why is</p> <p>2 because through some quirk -- and I don't know who</p> <p>3 made this decision -- but the -- when the states did</p> <p>4 the requisitions of identifying the requirement and</p> <p>5 providing the contract -- contracting with the money,</p> <p>6 the -- the requisitions were assigned to three</p> <p>7 different contracting officers. And I was one of the</p> <p>8 three.</p> <p>9 Q Okay.</p> <p>10 A That's why they have -- that's why</p> <p>11 there's three of them, because they were assigned to</p> <p>12 different contracting officers.</p> <p>13 Q Do you recall sitting here today whether</p> <p>14 you as a contracting officer issued any task orders</p> <p>15 under the IDIQ for the State of Washington?</p> <p>16 A I -- I cannot -- I cannot recall that.</p> <p>17 I -- I think there was one, but I cannot recall</p> <p>18 whether I issued that one or not.</p> <p>19 Q Well, do you recall hearing that there</p> <p>20 was a task order issued under the IDIQ for the State</p> <p>21 of Washington, regardless of whether you were the</p> <p>22 administrative contracting officer?</p> <p>23 A I don't remember. I mean, if it -- if</p> <p>24 it wasn't assigned to me, you know -- and at the</p> <p>25 time, I had more than enough work than to worry about</p>
<p style="text-align: right;">Page 35</p> <p>1 Q Is that what you thought --</p> <p>2 A Unless the State of California is</p> <p>3 accounted for somewhere else.</p> <p>4 Q I think we'll get to California in a</p> <p>5 little while, but my question is, is that what you</p> <p>6 thought at the time, that this was inaccurate?</p> <p>7 A Sir, that was five years ago. I don't</p> <p>8 know what I thought at the time. I received this</p> <p>9 letter and I took it as -- this is what the agency</p> <p>10 was going to do. I didn't argue with it, I didn't</p> <p>11 analyze it, I just thought this is the decision that</p> <p>12 the agency made, and at that point my job was to</p> <p>13 execute their plan.</p> <p>14 Q Okay. Well, would you -- was it your</p> <p>15 understanding at the time at the very least that</p> <p>16 Region 4 still had some money left on its IDIQ</p> <p>17 contract?</p> <p>18 A No, that -- I -- I'll repeat -- I'll say</p> <p>19 again -- I do not know what my thought was at the</p> <p>20 time because it was so long ago.</p> <p>21 Q Okay. So just a couple of questions on</p> <p>22 this chart. There's -- looks to be three different</p> <p>23 task orders for the State of Oregon?</p> <p>24 A Yeah -- yes, there is. Eventually they</p> <p>25 were -- they were morphed into one, but I guess you</p>	<p style="text-align: right;">Page 37</p> <p>1 someone else's workload.</p> <p>2 Q So you don't know one way or the other</p> <p>3 whether there was a task order issued to the State of</p> <p>4 Washington -- or sorry --</p> <p>5 A Yeah, I --</p> <p>6 MS. GRAY: Object to form. Asked and</p> <p>7 answered.</p> <p>8 BY MR. ROSMAN:</p> <p>9 Q Well, let me just try it again. There</p> <p>10 was a lot of talking. You don't know one way or the</p> <p>11 other whether there was a task order issued under the</p> <p>12 IDIQ for services performed in the State of</p> <p>13 Washington?</p> <p>14 A I -- I don't -- it was not assigned to</p> <p>15 me, so I don't know -- I don't know what happened in</p> <p>16 the State of Washington. I don't remember doing a</p> <p>17 task order for the State of Washington.</p> <p>18 Q So going to ask you some questions about</p> <p>19 the 8(a) program now. Prior to the IDIQs being</p> <p>20 issued, did you use the 8(a) program to provide any</p> <p>21 administrative services to the NRCS?</p> <p>22 A I -- yes, I did. I did. I did.</p> <p>23 Q For what states?</p> <p>24 A Okay. There you are. Now I recall I</p> <p>25 think -- it was right, it was -- I think it was</p>

<p>1 Washington. They -- instead of doing -- and I 2 don't -- I don't recall the reason why, but it seems 3 like that there was some sort of emergency, and it 4 was -- I think it was before the IDIQ -- and it may 5 not have been -- it may have been after the IDIQ -- 6 but I know there was an emergency, because it was the 7 first time I used the 8(a) program, and they said 8 that they needed the contract in place in like 48 9 hours. I mean, it was really, really quick. And I 10 don't know what caused the emergency, I don't know 11 whether they had said that they were no longer using 12 Ultima, or that Ultima had reached their ceiling -- I 13 don't remember the reason. I just remember it was 14 emergency. And I called the 8(a) -- excuse me -- I 15 called the Small Business Administration in the State 16 of Washington, and I said, I would like to e-mail you 17 a solicitation for requirement that I have, and I 18 really need to get something in place in the next 48 19 hours, and that the new contractor would have to hire 20 the current employees. So -- but I just don't 21 remember what the emergency was, or rather -- whether 22 the contract had been Ultima before -- I don't 23 remember. I just know that I was given the task to 24 get something on the -- a viable contract in place 25 within like 48 hours or so. So I called the Small</p>	Page 38	<p>1 to award a task order to Ultima. 2 Q I'm trying to get to the period before 3 the IDIQs, so that's what I'm asking about. Any 4 contracts that you utilized the 8(a) program for to 5 provide administrative services to an NRCS office in 6 the pre-IDIQ time period? 7 A I'm going to say that I don't think so, 8 but I'm also going to add that that's a long time 9 ago, and maybe the better answer would be I don't 10 remember doing so. 11 Q Mr. Stover, I think your screen froze, 12 for me at least -- did it freeze for other people, or 13 just me? 14 A I'm fine here. 15 MR. ROSMAN: Oh, I know you're fine. So 16 I'm going to ask the court reporter then to just 17 repeat the answer back, because I didn't hear much of 18 it. 19 THE REPORTER: "I'm going to say that I 20 don't think so, but I'm also going to add that that's 21 a long time ago, and maybe the better answer would be 22 I don't remember doing so." 23 24 (Discussion off the record) 25</p>	Page 40
<p>1 Business Administration, and they arranged for a 2 Native American concern to look at the solicitation. 3 They provided me some numbers. Their numbers were 4 fairly close to the government estimate, and we 5 awarded that contract, a sole source under the 8(a) 6 program, to this Native American firm. But I -- I 7 just can't remember whether it was before the IDIQ or 8 after the IDIQ. I'm thinking it was before, and I 9 don't remember what the emergency was, why that we 10 had to do something right away, but I do remember 11 that it was -- at the time it seemed like that's the 12 only thing in the world was important was to get that 13 contract in place. 14 Q So would you say that the time crunch 15 was a primary motivation for you using an 8(a) sole 16 source contract? 17 A Yes, no other way I could have did it. 18 Q Can you recall any other instance prior 19 to the IDIQs -- and I know you said you're not sure 20 this one was prior to the IDIQs -- but can you recall 21 any other instance which may have been before the 22 IDIQs in which you utilized the 8(a) program to 23 provide administrative services to an NRCS office? 24 A No, because we had the -- we had the 25 IDIQ with Ultima, and it was -- it was fairly simple</p>	Page 39	<p>1 BY MR. ROSMAN: 2 Q Okay. I don't remember doing so is a 3 fine answer. Okay. Now, was there anyone at the 4 Department of Agriculture at any time that suggested 5 that you should use the 8(a) program in order to meet 6 requirements for administrative support for NRCS 7 state offices? 8 A No. 9 Q To your knowledge, was there any plan at 10 the Department of Agriculture to increase the NRCS's 11 use of the 8(a) program? 12 A No. 13 Q Or FPAC's? 14 A Well -- no, the answer is no. 15 Q Okay. So what is the discretion that a 16 warranted contracting officer has in awarding 17 contracts pursuant to the 8(a) program? 18 A Well, in the -- it describes the 19 authority of a contracting officer as being broad. I 20 mean, there's -- unless you were giving guidance 21 otherwise, and as long as it was legal, how you did 22 your contracts were -- you were given broad latitude 23 in doing that, whether you went GSA, whether you went 24 8(a) program, whether you went full open 25 competition -- there was -- up until the time that</p>	Page 41